

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Violent Television Programming
And Its Impact on Children

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MB Docket No. 04-261

Comments of

THE CHILDREN'S MEDIA POLICY COALITION

Children Now
American Psychological Association
American Academy of Pediatrics
Action Coalition for Media Education
American Academy of Child and Adolescent Psychiatry
Benton Foundation
National Institute on Media and the Family
National PTA
Office of Communication of the United Church of Christ, Inc.

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I. INTRODUCTION

Children Now, the American Psychological Association, the American Academy of Pediatrics, Action Coalition for Media Education, the American Academy of Child and Adolescent Psychiatry, the Benton Foundation, the National Institute on Media and the Family, the National PTA and the Office of Communication of the United Church of Christ, Inc. (hereafter “Children’s Media Policy Coalition” or “Coalition”) hereby submit Comments to the Federal Communications Commission (“Commission” or “FCC”) in the above-docketed Notice of Inquiry (“NOI”).

The Children’s Media Policy Coalition maintains that the television industry has not adequately implemented a television ratings system¹ that successfully informs parents about television program content in order to help them determine whether the material is inappropriate for, or harmful to, their children and that enables parents to block objectionable programming through use of the V-chip. Given the hundreds of scientific studies that have documented the risk of harmful effects from children’s exposure to depictions of violence² and the “compelling governmental interest in empowering parents to limit the negative influences of video programming that is harmful to children,”³ the Coalition believes that action must be taken to improve the current television ratings system. The Coalition urges television broadcasters to adopt industry-wide rating, labeling and promotional practices that will better serve the informational needs of

¹ For the purposes of these comments, the Coalition will use the terms “television ratings system,” “ratings system,” and “TV parental guidelines” interchangeably.

² Paik, H. and Comstock, G., “The Effects of Television Violence on Antisocial Behavior: A Meta-Analysis,” *Communication Research* 21:4 (August 1994): pp. 516-546.

³ § 551 (a) (8).

parents and suggests that if the industry is unable to do so in a satisfactory manner, regulatory action may be warranted.

II. BACKGROUND

The Commission seeks comment on many factors related to the amount and types of violence on television, the effect of violent programming on children and the systems that have been created to help parents make informed decisions about the television programs their children watch. Regarding these issues, the Children's Media Policy Coalition acknowledges that there is a tremendous amount of violent programming on television today. We believe the National Television Violence Study provides the most accurate and reliable accounting of television violence to date⁴ and while various studies may have documented slight changes in the number of violent programs and scenes over the last six years, the changes are not significant enough to alter the need for public attention or industry action in this area.

Based on the conclusions of hundreds of research studies, the Coalition agrees with the United States Congress in its finding that children who are exposed to violent programming face a higher risk of suffering from harmful consequences.⁵ These harmful consequences include a belief that it is acceptable to behave aggressively and violently,

⁴ Though other studies have been conducted since the NTVS Volume 3 in 1998, the Coalition believes that it is the most reliable and accurate assessment of the presence of violent images that would be most likely to have negative consequences for children. In the NTVS "violence is defined as any overt depiction of a credible threat of physical force or the actual use of such force intended to physically harm an animate being or group of beings. Violence also includes certain depictions of physically harmful consequences against an animate being/s that occur as a result of unseen violent means."

⁵ § 551 (a) (4) "Studies have shown that children exposed to violent video programming at a young age have a higher tendency for violent and aggressive behavior later in life than children not so exposed, and that children exposed to violent video programming are prone to assume that acts of violence are acceptable behavior."

an increased desensitization towards violence in real life, a greater tendency for engaging in violent and aggressive behavior later in life and a heightened fear of becoming a victim of violence.⁶

Additionally, the Coalition believes that there is indeed a “compelling governmental interest in empowering parents to limit the negative influences of video programming that is harmful to children”⁷ and that “providing parents with timely information about the nature of upcoming video programming and with the technological tools that allow them easily to block violent, sexual, or other programming that they believe harmful to their children is a non-intrusive and narrowly tailored means of achieving that compelling governmental interest.”⁸ A reliable, consistent, understandable and accessible ratings system would be an invaluable tool to parents who are interested in monitoring and regulating the amount of violent television programming to which their children are exposed.

Unfortunately, such a ratings system does not yet exist. The Coalition, therefore, would like to focus our comments on illustrating the ways in which the current TV parental guidelines fail to serve as a useful informational resource for parents and how the failure of these guidelines makes the V-chip inherently less useful. We will also offer our suggestions for ways the industry could, either voluntarily or with FCC regulation, improve both in order to best serve the public interest of parents and children.

⁶ Murray, J. P., “Television and violence: Implications of the Surgeon General's research program,” *American Psychologist* 28 (1973): pp. 472-478.
National Institute of Mental Health, *Television and Behavior: Ten Years of Scientific Progress and Implications for the Eighties, Volume 1* (Rockville, MD: U.S. Department of Health and Human Services, 1982).

Kaiser Family Foundation, *National Television Violence Study, Volume 3* (Thousand Oaks, CA: Sage Publications, Inc., 1998).

⁷ § 551 (a) (8)

⁸ § 551 (a) (9)

III. INDICATIONS OF SYSTEM FAILURES

The Coalition maintains that the current TV parental guidelines have not been developed and deployed in a way that ensures successful adoption by parents. This position is based upon research that shows that a small percentage of parents are using the television ratings to monitor their children's viewing habits, that most parents do not have a complete understanding of the meaning of the various ratings labels, and that the ratings themselves are not being applied accurately or consistently to television programs.

According to a September 2004 Kaiser Family Foundation poll, despite the fact that 89% of parents are either "very concerned" or "somewhat concerned" about the media content to which their children are exposed, only half of parents say they have used television ratings, and only one in four of these parents says they use them often.⁹ One reason for these low numbers is that many parents still are not familiar with the TV parental guidelines or the TV ratings system. In fact, one out of five parents says that they have never even heard of the television ratings.¹⁰

Additionally, many parents don't recognize the content descriptors, with only half (51%) understanding that a "V" rating identifies a program that contains violent scenes and even fewer able to define the "L," "S" and "D" ratings (40%, 37% and 4% respectively).¹¹ Furthermore, only 28% of parents with children 2- to 6-years-old knew that a TV-Y7 rating means a program was created for children age seven and older, and only 12% knew that the FV content descriptor means that a program contains "fantasy

⁹ Kaiser Family Foundation, *Parents, Media and Public Policy: A Kaiser Family Foundation Survey*, (Menlo Park, CA: Kaiser Family Foundation, September 2004).

¹⁰ *Ibid.*

¹¹ *Ibid.*

violence.” In fact, 8% of parents of young children believed FV meant “family viewing.” This is especially troublesome since the types of violence that would warrant a FV rating have a high risk of harmful effects for young viewers.¹²

This lack of knowledge about the TV parental guidelines has implications for parents’ use of the V-chip to block inappropriate television programming from their children. The Annenberg Public Policy Center at the University of Pennsylvania found that parents who do not understand the TV ratings system and V-chip features are less likely to use the V-chip.¹³ In their controlled experiment, families who received detailed instruction on the meaning of the TV ratings and V-chip features were 57% more likely to try the V-chip than families who did not receive instruction.

The application of the TV parental guidelines to television programs is another factor that causes concern about the current ratings system. For those parents who are aware of and understand the TV ratings, a large number (39%) say most shows are not rated accurately. An additional 46% believe that shows are rated inaccurately “some of the time.”¹⁴ Further, a National Institute on Media and the Family study found that parents often disagreed with the TV ratings that were assigned to shows for particular age groups. For example, only about one-fourth of shows with a TV-PG rating were approved by parents for 8- to 12-year-olds and only about one in ten shows with a TV-14 rating was acceptable to parents for 13- to 17-year-olds.¹⁵

¹² Wilson, B. J., Smith, S. L., Potter, W. J., Kunkel, D., Linz, D., Colvin, C. M., and Donnerstein, E., “Violence in Children’s Television Programming: Assessing the Risks,” *Journal of Communication* 52 (March 2002): pp. 5-35.

¹³ Annenberg Public Policy Center, *Parents’ Use of the V-chip to Supervise Children’s Television Use*, (Philadelphia: Annenberg Public Policy Center, April 2003).

¹⁴ Kaiser Family Foundation, *Parents, Media and Public Policy: A Kaiser Family Foundation Survey*, (Menlo Park, CA: Kaiser Family Foundation, September 2004).

¹⁵ National Institute on Media and the Family, *Parents Rate the TV Ratings*, (Minneapolis: National Institute on Media and the Family, May 1998).

The evidence that the age-based ratings are not applied appropriately may explain why only 28% of parents who use the TV parental guidelines feel the age-based ratings provide the most useful information about a program. Conversely, 56% believe the content descriptors are the most useful. Unfortunately, research shows that content descriptors are neither consistently nor accurately applied either. In their examination of the TV industry's use of the ratings, Kunkel *et al.* found that the content descriptor "V" for violence was not applied to all programs that included violent scenes. Of broadcast prime-time programs rated TV-G, a rating that does not receive content descriptors, 29% contained violent content. Furthermore, of the TV-PG programs that received no "V" content descriptor, 43% contained violence, as did 79% of programs rated TV-14 without a "V" designation.¹⁶ According to a 1998 Kaiser Family Foundation study, content labels were only applied to one out of five television programs with violence, sexual material or adult language.¹⁷ Based on these findings, the Coalition must question how parents can be expected to rely on the TV parental guidelines to assist them in their efforts to identify and curtail the amount of violence to which their children are exposed.

Inaccurate and unreliable ratings also affect the usefulness of V-chip technology that was created to allow parents to block programming that they determine is inappropriate for their children. The Coalition maintains that the V-chip, in its current state, is inadequate to help a majority of parents. The efficacy of the V-chip depends, in large part, on the accuracy and reliability of the ratings system. Otherwise, programs containing violent or sexual material that is not rated appropriately will not be block and

¹⁶ Kunkel, D., Farinola, W.J.M., Farrar, K., Donnerstein, E., Biely, E., and Zwarun, L., "Deciphering the V-chip: An Examination of the Television Industry's Program Rating Judgments," *Journal of Communication* 52 (March 2002): pp. 112-138.

¹⁷ Kaiser Family Foundation, *Rating Sex and Violence in the Media: Media Ratings and Proposals for Reform* (Menlo Park, CA: Kaiser Family Foundation, November, 2002).

will be available for children's consumption. Until programs are given accurate and reliable age-based ratings and content descriptors, parents will not be able to trust that their V-chip is adequately blocking all content that they feel is objectionable.

IV. COALITION RECOMMENDATIONS FOR IMPROVEMENT

The Coalition firmly believes that a reliable, consistent, understandable and accessible ratings system would empower parents in choosing how much exposure their children have to violent, sexual or other television programming. The current TV parental guidelines and V-chip fall far short of being effective tools for parents. To remedy this, the Coalition urges the Commission and the industry to consider the following modifications to ensure that the TV parental guidelines and V-chip emerge as the truly useful informational tools for parents that Congress envisioned them to be.

A. Recommended Industry-Initiated Improvements

1. *Provide Parents with Descriptive and Accurate Content Descriptors*

The Coalition's foremost recommendation is that the industry provide parents with accurate, reliable, understandable and consistently applied age-based ratings and content descriptors. The current system is ineffective. For example, some content descriptors are used in program ratings, but studies have shown these ratings are not always accurate and parents seek more description to understand the ratings. The ratings also are not applied consistently for all programs or across all networks, as some, such as NBC, have chosen not to employ content descriptors at all. To resolve these problems, the Coalition urges the industry to modify the current system and adopt an accurate, reliable, understandable and consistently applied ratings system that employs both age-based ratings and content descriptors and that is used by all broadcasters.

2. *Make the Ratings More Accessible to Parents*

The Coalition recommends that broadcasters increase efforts to ensure ratings are more accessible to parents by displaying the ratings continuously throughout each program, including ratings on all program advertisements and promotions, and taking advantage of emerging click-thru, interactive technology to provide on-demand ratings information to parents.

Currently, TV ratings are displayed on screen during the first 15 seconds of a program—a very small window of time for parents to obtain ratings information for a program. This is especially troublesome since many television program guides and network Web sites do not list the program ratings information. In the same way that broadcasters display their network affiliation logos throughout the course of a show, they should display the rating of each show throughout the program broadcast. The Commission recently adopted a similar requirement to assist parents in identifying children's educational programming.¹⁸

The Coalition also recommends that broadcasters include ratings on all program advertisements and promotions to allow parents to gather information about the content of a program *before* it is broadcast.

In addition, as television transitions from analog to digital, the Coalition asks that broadcasters use emerging click-thru, interactive technology to provide on-demand ratings information to parents. Parents should be able to click on a TV rating on the screen to find out what the age-based rating and content descriptors mean, as well as to obtain more detailed information about why a program received a particular rating.

¹⁸ Press Release, FCC, FCC Adopts Children's Programming Obligations for Digital Television Broadcasters (Sept. 9, 2004), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-251972A1.doc.

3. *Help Educate Parents About the Ratings and V-chip*

The Coalition recommends the industry provide parents with information about the ratings system and V-chip by launching broad public education campaigns. These campaigns should include a significant increase in the small number of public service announcements that are currently broadcast on the ratings and V-chip. Broadcasters should also ensure that these public service announcements air during prime time when parents are most likely to be watching. Additionally, the FCC, broadcasters and public advocates should take action to ensure that ratings information is made available in local newspaper television guides which currently fail to include this information.

The Coalition also recommends the FCC provide parents information about the ratings system and V-chip. The Coalition recognizes that parents may already find ratings information if they know to access the FCC Web site;¹⁹ however, the Commission needs to undertake other efforts to reach out to parents. The FCC's DTV consumer education campaign is a good example of the type of public education campaign that the Commission itself could undertake to provide information to parents about the ratings system and V-chip.

If the industry is unable or unwilling to achieve any of these recommendations on its own, the Coalition asks the FCC to take regulatory action or, if it concludes that it lacks the requisite authority, to ask Congress for a mandate specifically to make improvements to the ratings system.

¹⁹ FCC Parents' Place, <http://www.fcc.gov/parents/>.

B. Regulatory Option in the Absence of Industry Initiative

The Coalition believes that the FCC could reasonably conclude that it has the statutory authority to revisit the TV parental guidelines to ensure their effectiveness and ease of use. Regardless of whether the FCC's general public interest authority is sufficiently broad to regulate violent programming, Title V of the Telecommunications Act of 1996 provides adequate authority.²⁰

Title V delegates authority to the FCC to implement TV ratings and the V-chip.²¹ The underlying purpose of this delegation is clearly expressed in the title of § 551, “Parental Choice in Television Programming,” and in the language of the Act. In § 551(a), Congress explained it found a problem of children being exposed to violent programming, leading to a higher tendency for violent and aggressive behavior and eroding their parents' ability to develop responsible attitudes and behavior in their children.²² Congress recognized there was a “compelling governmental interest in empowering parents to limit the negative influences of video programming that is harmful to children.”²³ It then determined the ratings system and V-chip were the most “non-intrusive and narrowly tailored means” of providing parents with “timely information about the nature of upcoming video programming and with the technological tools that allow them easily to block violent, sexual, or other programming.”²⁴

Sections 551(b) and (e) authorized the FCC to establish an advisory committee to propose guidelines and recommended procedures for a ratings system if it found the

²⁰ See *In the Matter of Violent Television Programming and Its Impact on Children, Notice of Inquiry*, FCC 04-175 at ¶¶ 24, 26 (rel. July 28, 2004).

²¹ § 551, Pub. L. 104-104, 110 Stat. 139-42 (1996).

²² § 551(a)(4) and (6).

²³ § 551(a)(8).

²⁴ § 551(a)(9).

industry did not create an acceptable system of its own within one year of enactment.

The industry proposed the current guidelines, which were found to be acceptable by the Commission,²⁵ arguably ending the Commission's authority to prescribe guidelines recommended by an advisory committee.

However, another subsection gives the FCC oversight authority. Subsection 551(d), which added new § 330(c) to prohibit the manufacture of television sets not in compliance with FCC rules on blocking technology, further states that the FCC rules “shall provide for the oversight by the Commission of the adoption of standards by industry for blocking technology.”²⁶ The ratings system is clearly a “standard by industry for blocking technology.” It is a standard *integral* to blocking technology. The V-chip simply cannot technically operate without the ratings system. Lawmakers were aware of the hand-in-hand nature of this system at the time. It was anticipated that technological advances in the V-chip or other blocking technology would result in technical changes that could necessitate modifications to the ratings system.²⁷ It is inconceivable that Congress would have contemplated the Commission's continued oversight over blocking technology without the ability to ensure the ratings' continued effectiveness in light of these technological advancements. At the very least, the statute is ambiguous as to the Commission's continuing oversight authority over the ratings portion of the system. Where a statute is silent or ambiguous on a specific issue, the

²⁵ *In the Matter of Implementation of Section 551 of the Telecommunications Act of 1996*, 13 FCC Rcd 8232, 8232 (1998).

²⁶ § 551(d)(3) (codified at 47 U.S.C. § 330(c)(3) (2004)).

²⁷ *See, e.g.*, § 551(d)(4) (requiring the FCC to take action as new video technology is developed to ensure that blocking service continues to be available to consumers). In fact, the Commission recently adopted the Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Docket # 03-15 at ¶ 156, 69 Fed. Reg. 59,500 (Oct. 4, 2004), which requires all DTV receivers to “be designed to be able to respond to changes in the content advisory system.” Press Release, Tri-Vision International Ltd., Tri-Vision Welcomes FCC Open V-chip Requirement for all Digital TV Devices,” Sept. 8, 2004.

agency's interpretation of the statute will be given great deference if it is a reasonable or permissible interpretation of the statute.²⁸ Thus, it would be a reasonable and permissible interpretation of the statute for the FCC to conclude that it retains oversight over the entire ratings system and V-chip.

This interpretation does not contradict the specific language of the Act, at the very least is implicit in the statute, and is supported by legislative intent. The only action with regard to ratings specified by the Act directed the FCC to establish an advisory committee and to prescribe guidelines and recommended procedures. Continued oversight authority by the FCC does not contradict this language. Instead, it enhances the underlying purpose of Congressional delegation in this area, which was "empowering parents" and providing them with "technological tools that allow them easily to block violent, sexual or other programming."²⁹ This underlying purpose of providing an effective tool for parents, when combined with the provision of continued oversight over the V-chip blocking technology, provides implicit authority for continued oversight of the companion ratings system. Upon adopting the ratings system and V-chip, members of Congress also expressed language supportive of continued oversight.³⁰

Further, FCC action here would not share the same fate as the action struck down by the Court of Appeals, District of Columbia Circuit, in *Motion Picture Association of America, Inc. v. FCC*.³¹ The Commission interpreted *MPAA* as holding it had no

²⁸ *Chevron v. Natural Res. Defense Council*, 467 U.S. 837, 843 (1984).

²⁹ § 551(a)(8) and (9).

³⁰ "We all will be watching what the television industry does to implement this new rating system...and we encourage the television executives to see today as a beginning, not an end. A beginning to a new partnership with America's families." 142 Cong. Rec. S1467-01, S1467-68 (daily ed. Feb. 29, 1996) (statement of Sen. Lieberman). "I am pleased that working together we have achieved a framework, while not perfect, that will serve to guide our communication policy both now and in the future." 142 Cong. Rec. H1145-06, H1176 (daily ed. Feb. 29, 1996) (statement of Rep. Costello).

³¹ *Motion Picture Association of America, Inc. v. FCC*, 309 F.3d 796 (D.C. Cir. 2003) [hereinafter *MPAA*].

authority to promulgate rules for video description because (1) the statutory authority from Congress only directed the FCC to produce a report and (2) the rules significantly affected program content.³² As mentioned above, the FCC received statutory authority from Congress to implement a ratings system as part of Title V and the statute could reasonably be read to provide the FCC with continued oversight. Moreover, the ratings system is distinguishable from the video description system because it does not significantly affect program content. The video description system was held to change program content because it required the creation of new script to convey program details aurally to assist visually impaired individuals in receiving the program's key visual elements.³³ A ratings system is different in that it does not involve changing the content of programming as it is received. A ratings system simply provides parents with information about the program so they may decide whether to allow their children to view programs that contain violence, sexual content, or mature language as the programs were intended to be received. The ratings system has no effect on program content at all.

Therefore, the Coalition believes the Commission has statutory authority to improve the ratings system where the industry has failed to provide an effective tool for parents to guard their children against the harms of violent television programming. If the Commission concludes otherwise, it should go to Congress to seek the authority it needs to make these improvements that truly empower parents and carry out the system as Congress intended.

Finally, the Coalition notes that Congress recognized that “providing parents with timely information about the nature of upcoming video programming and with the

³² *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 20885, 20909 n.139 (2003).

³³ *See MPAA*, 309 F.3d at 407.

technological tools that allow them easily to block violent, sexual, or other programming that they believe harmful to their children is a non-intrusive and narrowly tailored means of achieving” the “compelling governmental interest in empowering parents.”³⁴ The Coalition believes that improving the ratings system, and thereby the V-chip, in this way is still the most “non-intrusive and narrowly tailored means” of achieving the Congress’s purpose.

V. CONCLUSION

The television ratings system can be truly effective only when parents know it is available, know how to use it, and know the information about the content of a program is accurate and reliable. The television industry has shown time and again that it does not act in the best interest of children unless threatened by regulation or license revocation. The Coalition realizes that the industry has been allowed to develop and implement the TV parental guidelines on a voluntary basis. However, given the failure of the current system to reliably inform parents about the violent content in television programs and to provide them with a usable tool to block unwanted programming, the industry must ensure that there is an accurate, understandable, consistently applied, and easily accessible ratings system and voluntarily take the steps necessary to achieve such a system. Otherwise, the FCC should take regulatory action to ensure that children are, indeed, protected from the potential harm of violent programming.

³⁴ § 551(a)(8) and (9).